

BURNISHED LAW JOURNAL*Ayushi Ayesha***'CONSTITUTIONAL STATUS OF WOMEN IN INDIA****TABLE OF CONTENTS**

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ABSTRACT

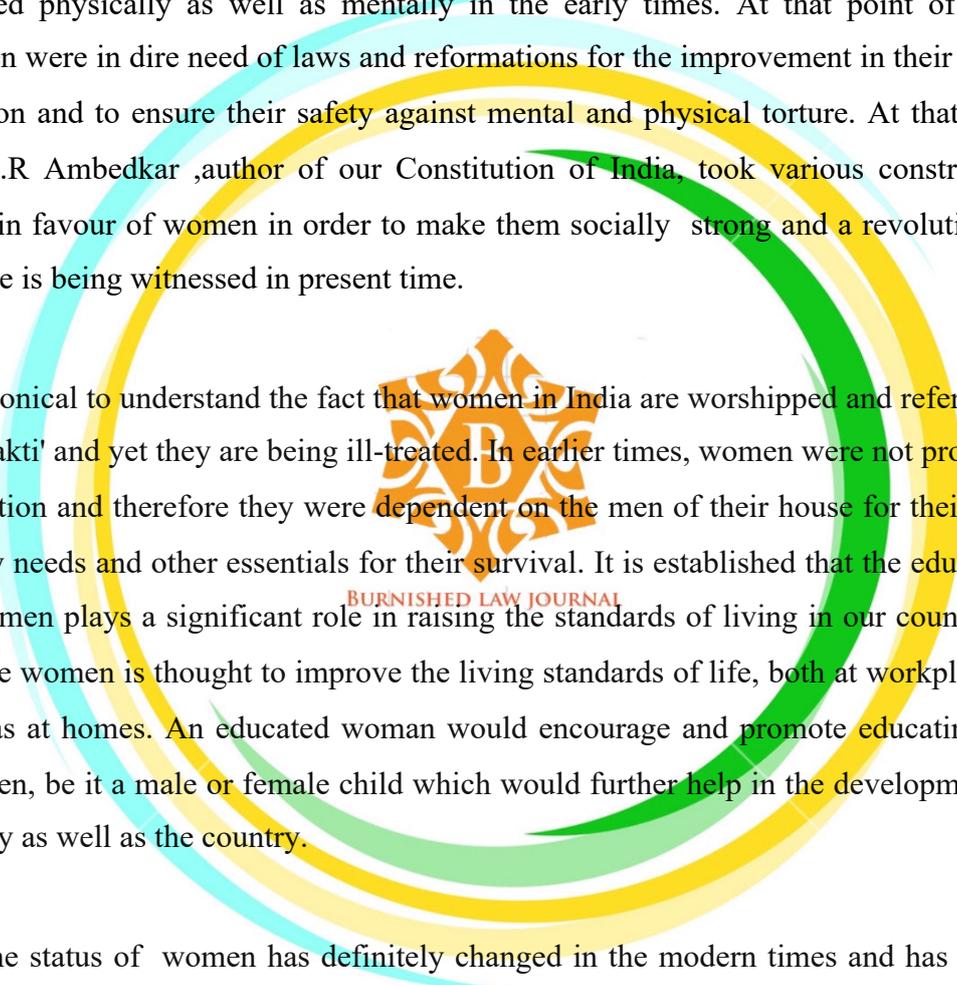
The rights provided to women today are very different from those available to them in earlier times. There can be the characterisation of rights available to women into two classes, one being the sacred rights and other as lawful rights or rights provided to women under the law by various Acts of the Parliament and the State Legislatures and other legislations.. The concept of gender equality has been underlined in the C.O.I in its Preamble, Part-III, Part IV-A and Part- IV . The Indian Constitution provides equality to women in various aspects. Moreover, it empowers the State to undertake measures of positive discrimination for women. India being a democratic polity has aimed at women's advancement in wide- ranged spheres through the laws, policies for development of women, plans, programmes, etc. Various International Conventions and human rights policies which aim at securing equal rights to women have also been entered into by India.

Earlier, the women in India faced a difficult time to the extent as their normal individual life is concerned. Torment, being in any form, be it mental or physical was very normal and the well being of women was in question. To be precise, Arts 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Indian Constitution are of much relevance in this matter. The status of women has gradually improved and has been uplifted through the implementation of various provisions of the Constitution as well as the formulation of special legislations for women-based crimes.

Chapter-1

INTRODUCTION

The Constitution of India was enacted on January 26, 1950. This was an era where the women of the country held low level of recognition. The social condition of the women in India was poor and hence it required an immediate reform. Women were tortured physically as well as mentally in the early times. At that point of time, women were in dire need of laws and reformations for the improvement in their social position and to ensure their safety against mental and physical torture. At that time, Dr. B.R Ambedkar ,author of our Constitution of India, took various constructive steps in favour of women in order to make them socially strong and a revolutionary change is being witnessed in present time.



It is ironical to understand the fact that women in India are worshipped and referred to as 'shakti' and yet they are being ill-treated. In earlier times, women were not provided education and therefore they were dependent on the men of their house for their day-to-day needs and other essentials for their survival. It is established that the education of women plays a significant role in raising the standards of living in our country. A literate woman is thought to improve the living standards of life, both at workplace as well as at homes. An educated woman would encourage and promote educating her children, be it a male or female child which would further help in the development of society as well as the country.

But the status of women has definitely changed in the modern times and has raised towards the betterment of their social conditions. Today, the women in India are educated and earn their own livelihood. The basic difference being that women have to shoulder double responsibility in comparison to the men in the society. Women work outside the house to earn for a better living as well as bears the responsibility for all the household chores. Even after putting in so much effort ,both at workplace as well as at home, women have not been given the recognition and status that they deserve.

It can be said that the difference brought in the social position of women has been due to the laws and directives laid down by the Constitution of India. Law cannot be changed instantly, it is a slow and comprehensive process. A lot has been done by the legal system for the betterment of living conditions for women but there remains a lot more to be done. The battle for justice against gender inequality has been long. Various constitutional provisions, laws and judgements have made significant contribution for the improvement of the status of women in India. Yet, there are major issues still unaddressed which need urgent actions.

Chapter-2

CONSTITUTIONAL RIGHTS OF WOMEN



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The Constitution of India has done a great work in providing justice in cases of gender based inequality by instituting various provisions in the supreme law of the land. The Constitution of India empowers the state to take steps of positive discrimination for the betterment for status of women. The preamble of our Constitution of India underlines equality of status in all terms of social, economic and political justice. The Preamble itself considers women as a class and permits the enactment and implementation of laws favouring women.

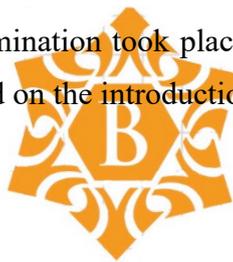
Various provisions have been laid down in the constitution for improving the social conditions of women. Some of the essential provisions can be laid as follows:-

FUNDAMENTAL RIGHTS:- "Part III of the Constitution contains a long list of fundamental rights. This chapter of the Constitution of India has very well been described as the Magna Carta of India."¹ These fundamental rights provide an affirmative action in favour of women.

¹ J.N. Pandey, *Constitutional Law of India* 60 (Central Law Agency, Allahabad, 56th edn.,2019).

Article 14 of the Constitution of India talks about equality. It talks about equality being given to people within the territory of India. This article ensures equality before law as well as equal protection of laws. The provision of this article in the Constitution of India is marked important for women as it provides equal legal protection to them against any women based crime. This article also enables the introduction and implementation of various legislations or other laws for providing protection and enforcement of women's legal rights.

Article 15 of the Constitution of India ensures that no individual shall be discriminated on the grounds of religion, race, caste, sex, place of birth or any other ground for discrimination. Clause(1) of this article emphasises mainly on the prohibition of discrimination on the ground of sex. Clause(3) is considered to be of much relevance in protecting women against discrimination as it empowers the state to make special provision for women and make affirmative discrimination in favour of women. A varied lot of discrimination took place against women in earlier times, but these were gradually abolished on the introduction of Article 15.



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Article 16 of the Constitution provides equal opportunity for employment to every citizen of the country. It states that a citizen shall not be discriminated on the ground of sex, caste, etc and be ineligible for any employment or offices which were under the state. In recent times, women are holding responsible positions under various Government offices.

DIRECTIVE PRINCIPLES OF STATE POLICY:- These are mentioned in Part IV of the Constitution of India. These are policies laid down for the State to follow. The makers of the Constitution intended to ensure equality in opportunity as well as in reality.

"Article 39 of the constitution says that " The State shall, in particular, direct its policy towards securing (a) that the citizens, men and women equally, have the right to an adequate means to livelihood;(d) that there is equal pay for

equal work for both men and women; (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength." ²

"Article 42 requires the state to make provision for securing just and humane conditions of work and for maternity relief."³ Article 46 of the Indian Constitution directs the state to take steps for the promotion of education as well as careful measures to be taken for improving the economic conditions of the weaker sections in the society. The aim of such provisions is to establish a society having gender equality.

THE CONSTITUTION (73rd AMENDMENT) ACT,1992

Part IX consisting of 16 articles and the Eleventh Schedule had been introduced through this amendment. This Part included article 243 which includes various provisions relating to Panchayats in India. Various clauses under this article such as 243-D(3), 243-T(3),243-T(4),etc provide reservation for women in various offices of the Panchayat such as providing reservation for one-third of the total number of offices of chairpersons in the Panchayat, etc.

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Chapter-3

LEGAL RIGHTS OF WOMEN

Various legislative measures have been taken to ensure protection of women against discrimination and ensure just implementation of their legal rights. These legislations

² The Constitution of India 1949, available at <https://indiankanoon.org/doc/237570/>(Visited on May 12, 2020)

³ Women's Rights and Indian Constitution, available at <https://shodhganga.inflibnet.ac.in/bitstream/10603/202242/1/11%20chap%20-%204.pdf>(Visited on May 03,2020)

have been made under the Indian Penal Code as well as other Special Laws. Some of these laws providing positive discrimination for their protection can be enlisted as:

Immoral Traffic (Prevention) Act (1956) has derived its formulation and implementation from Article 51:A of the Constitution of India which asserts to renounce practices which are derogatory to the dignity of women. This act, being a women specific legislation, primarily prevents trafficking of women and girls from sexual exploitation for commercial purposes such as those of prostitution, etc. This law provides protection to women, thereby, upholding their dignity, social status, safety and self-respect and their right to a dignified livelihood which has been talked about in Article-21 of the Constitution of India.

Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (1994):- "This act was formulated and implemented to prevent the women- based crime of female foeticide. This means' distinguishing and murdering female baby before they take birth."⁴ In old days, females were considered as liability on the family and male child was thought to be the successor and the care-taker of the family, and hence girl child was aborted in the womb of the mother before its birth. This practice violated Article 14 of the Constitution of India. To ensure equality and prevent abortion of girl child by pre-natal diagnosis, this act was implemented deriving its formulation from the constitution itself to uphold the principles laid down in Article 14.

Protection of Women from Domestic Violence Act (2005) was passed in relevance to Article 253 of the Constitution of India, which provides the Parliament to make laws in pursuance of international conventions, treaties, pacts, etc. This act was passed to follow the recommendations of the United Nations Committee on the CEDAW. This Act has been implemented to protect women from domestic violence."It also covers women who have been/are in a relationship with the abuser and are subjected to violence of any kind—physical, sexual, mental, verbal or

⁴ P.Abishek, Gayathri.J," A Critical Analysis of Status Of women In India", 5 IJPAM,4853(2018)

emotional."⁵ This act was passed to guarantee the fundamental rights to women provided under Article- 14,15 and 21 of the Constitution of India.

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Indian Penal Code: This legislation was enacted in 1860 and contains various provisions for women-centric crimes which can be enlisted as:

Rape:- The laws relating to rape have been included in Section-376 of the Indian Penal Code. These laws provide protection to woman's dignity and are woman-centric in nature.. These laws have been enacted as the crime infringes Article- 21 which talks about the right of an individual to have a dignified life.

Dowry Death: The description and punishment for this crime has been mentioned in Section 304B of the Indian Penal Code. The meaning of the 'dowry' is same as that mentioned in section 2 of the Dowry Prohibition Act, 1961.

Acid Attack: The provision for the offence of acid attack was recently introduced as a separate offence under the Indian Penal Code. This was done through the Criminal Amendment Act,2013. Section 326A deals with the punishment for acid throwing which is 10 years of imprisonment and can extend up to life imprisonment. Section 326B deals with the punishment for an attempt at throwing acid.

In **Laxmi Vs Union of India**⁶, a petition was filed by an acid attack victim for the regulation on sale of acid and adequate compensation for victims. The Supreme Court imposed strict regulations on the sale of acid in 2013.

Maternity Benefit Act (1961):- The enactment of this legislation owes its existence to the provision of Article 51A in the Indian Constitution. Article 51A being a fundamental duty mentions that every citizen shall perform the duty of renouncing practices which are derogatory to the dignity of women. Also, this act has been

⁵ Women Rights in India: Constitutional Rights and Legal Rights, *available at*

<https://edugeneral.org/blog/polity/women-rights-in-india/> (Last modified on August 3, 2017)

⁶ (2014) 4 SCC 427

formulated to uphold the principle laid down in Article 42 which requires the state to make provision for securing just and humane conditions of work and for maternity relief. This Act provides protection to the employment of women in their face of maternity and combats the biases that a woman faces during her pregnancy as well as after the birth of her child in their workplace. This act has provisions which provide maternity benefit to women in cases of wages, leave grants, work from home options, etc. Earlier, women had to quit jobs or were suspended from their employment places in their maternity phase but the enactment of this legislation has provided support and equity to women as well as upheld the principles laid down in the Constitution.

Sexual Harassment of Women (Prevention, Prohibition and Redressal), Act (2013): This act aimed at providing protection to women at the place of their work and attempted to prevent cases of sexual harassment. Sexual harassment at workplace violates the right to equality, life and liberty of women.



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The Supreme Court observed the need for the enactment of such legislation for the first time in the case of **Vishakha Vs. State of Rajasthan**⁷ and laid down guidelines and norms

" It is necessary and expedient for employers in work places as well as other responsible persons and institutions to observe certain guidelines to ensure the prevention of sexual harassment of women. It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts, of sexual harassment by taking all steps required."⁸

Other legislations in favour of women are Indecent Representation of Women(Prohibition) Act(1986), Commission of Sati(Prevention) Act(1987), Equal Remuneration Act(1976) which provides equal remuneration to both men and women

⁷ AIR 1997 SC 3011

⁸ Nikunj Keyal, Sexual Harassment of Women at Workplace, *available at* <http://www.legalservicesindia.com/article/2114/Sexual-Harassment-of-Women-at-Workplace.html>,(Visited on May 4,2020)

for the same work, Legal Services Authority Act(1987) which gives free legal services to women, Hindu Marriage Act(1955) which provides equal rights to men and women for marriage as well as divorce, Hindu Succession Act(1956), National Commission for Women Act(1990), Dowry Prohibition Act (1961) which prohibits the transfer of dowry from woman to the husband or his family at the time of marriage or at any instance, Dissolution of Muslim Marriages Act (1939), Muslim Women (Protection of Rights on Divorce) Act (1986) and so on.

In the case of - **Mohd. Ahmad Khan vs. Shah Bano Begum & Ors**,⁹ The petitioner was a 62 year old woman who filed a petition in court and demanded maintenance from her divorced husband. She claimed maintenance under section 123 of the Code of Criminal Procedure which requires a divorced man to provide maintenance to his wife in case she is unable to feed herself. The husband claimed that under the Muslim Personal Law, the husband has to provide maintenance only during the iddat period. The provisions of Code of Criminal Procedure apply to all the Indian citizens and hence , the then Chief Justice of India Y.V Chandrachud upheld the decision of the high court and ordered the husband to give maintenance to Shah Bano and also, increased the amount of maintenance.

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Chapter-4

SPECIAL INITIATIVES FOR WOMEN:

⁹ AIR 1985 SC 945

National Commission for Women:- This statutory body was set-up by the Government in January 1992. This commission has a specific mandate to study all matters which are related to various constitutional as well as legal safeguards provided for women and also monitor them regularly. This commission reviews the prevailing legislation relevant to women and suggest amendments wherever required. This commission has proved to be immensely helpful in recent times as it suggested the implementation of "The Sexual Harassment of Women at Workplace(Prevention ,Prohibition and Redressal) Act, 2013, Revised scheme for relief and rehabilitation of victims of rape, etc."¹⁰

Reservation for Women in Local Self- Government: The Government implemented the rule of one-third of the total seats in the elected bodies at the local level shall be reserved for women. This was done by the 73rd Constitutional Amendment Act which was passed in 1992 by the Parliament.

The National Plan of Action for the Girl Child (1991-2000): This plan was enacted to ensure the protection and development of the girl child. The aim of this plan was to build up a better future for the girl child.

National Policy for the Empowerment of Women,2001: This plan was prepared by 'The Department of Women and Child Development in the Ministry of Human Resource Development. The aim of this policy was to ensure the development and empowerment of women in India.

¹⁰ National Commission for Women, *available at* <http://ncwapps.nic.in/firmLNewLaws.asp>,(Visited on May11,2020).

Chapter-5

WOMEN AND EDUCATION

Women's education plays a very importance role in determining the living standards within a country. A high rate of literacy among women improved the quality of life, both at home as well as outside. Education shall be promoted and encouraged among women. It has been witnessed through various studies that a lower level of literacy rate among women result in a higher level of fertility and infant mortality, poor nutrition, low earning potential and diminished ability of women to take decisions within the household. The Constitution of India states in article 45 that early childhood care and education shall be provided to all children up to the age of 6years. Article 21A also talks about the provision of free and compulsory education by the state to all children of the age 6 to 14years. Article 15(3) also empowers the state to a make any special provision for women and hence, education of women also. Primary education has now become a legal right by the 93rd Amendment Act of the constitution. A survey conducted in India established that the infant mortality rate was inversely related to the literacy rate of female as well as educational level. The survey witnessed relation between education and economic development. In India, there exists a great difference in the female literacy rates in different states of the country. For example: female literacy rate in Kerala is about 86% and that in Uttar Pradesh is around 55- 60%. The difference in literacy rates of females is also evident in the rural and urban areas of the country. Cast system accept an outstandingly central part as a hindrance to a young woman child's educational rights. There has been great improvement in upgrading the social, financial and legal rights of women. In India, the education of an age group between 18-24 is defined as higher education, and is being largely funded by the Government. Despite women making up 24-50% of higher age group, there is a gender imbalance within higher education. The Saakshar Bharat Mission for Female literacy was recently launched by the government and the aim of this mission is to bring down the female illiteracy to half its present level.

WOMEN- ECONOMIC, SOCIAL AND CULTURAL RIGHTS

"The movement to assure women's economic, social and cultural rights(ESCR) as a basic human's right is just emerging in India. ESCR focuses on the wider issues faced

by women across the country such as housing, poverty, employment, education, food, security, etc. The aim of the movement is to identify the rights of women within the wide framework of human rights."¹¹PWESCR stands for Project in India for Women's Economic, Social and Cultural Rights. The aim of this project is to increase movements relevant to rights of woman and provide equality to women in every field of their life. Various human rights movement focussing on the economic, social and cultural rights of women are being carried out at the international level.

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Chapter-6

CONCLUSION

Women, in our country have been provided various rights and liberties without the grounds of discrimination of any form. In some places, these rights are upheld by the legislation ,or a custom and conduct, whereas in other places, these rights are overlooked. Regardless the standards relevant to sexual orientation, our constitution is trying its best to provide equity but even after the state up taking measures of positive discrimination or separation for women, the women in India are bearing the brunt of segregation at the social level.

Today, the women in India are on balance which rather is extremely powerless in aspects of well-being, death rate, instruction or any other parameter for improvement. Even after the various steps undertaken to improve and raise the social wellbeing of women in the country, India still holds the 118th position out of 177 countries on sexual orientation value. Even after the passing of legislation restricting child marriage since 1960, as well as the Child Marriage Restraint Act, passed in 1929, child marriage is still a continuing practice across the country. According to the " Territory of World Children, 2009" report provided by UNICEF, 47% of the Indian

¹¹ Legal Status and Rights of Women in Indian Constitution, *available at* https://www.researchgate.net/publication/290691292_Legal_status_and_rights_of_women_in_Indian_constitution (Visited on May 12, 2020).

women were tied into the marital bond before the legitimate age of 18 years. Also, the legislature passed the Traffic Prevention Act, 1956, yet there are instances or activities of shameful trafficking of young women being carried out. Dowry Prohibition Act was has also been passed. Also, in 1987, The Indecent Representation of Women (Prohibition) Act was passed but the offences are still continuing in present times .A few infringements are still taking place in the country. The Women Domestic Act, 2005, came into constrain on 26th October, 2006. However, the upgrade in aggressive behavior is still at a rising pace.

SUGGESTION

Women, are considered as human beings portraying a weak part in the society, but actually they are the strongest one. Witnessing the history of our country, women were ill-treated, but even after such discrimination, women such as Rani Lakshmi Bai, Razia Sultan, who fought for themselves against the discrimination. By this, I can simply suggest that the Government to formulate laws, rules, regulations, policies for the security of women and to remove their hesitation and fear to step out for recognition. Various legislation for women have been formulated in past few decades. These laws have efficient provisions, still the crimes are rising at a speedy pace. s. The major drawback is their ineffective implementation. The administration as well the judiciary shall focus on the effective implementation of the laws passed for the protection of women. There are still some issues which are unaddressed and the legislature shall take these issues into consideration and formulate laws for the same. The constitution has made efficient provisions which help in the protection and upliftment of status of women in the society. Nothing can help a woman, until she

helps herself. There has been a drastic change in the status of women over the past few decades. Women now earn livelihood by stepping out and also contribute to the

economy of the country. Struggle of a women's life is more than a man. " Women are the largest untapped reservoir of talent in this world, Hillary Rodham Clinton."¹²



¹² Weforshe Fund- Our Vision and Mission, *available at* <https://weforshefund.org/> (Visited on May 12, 2020).



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